

GILMORE & MONAHAN, P.A.

Ten Allen Street
P.O. Box 1540
Toms River, NJ 08754
(732) 240-6000

Attorneys for **Defendants, Township of Toms River improperly pled as the Township of Toms River and the Toms River Police Department, Sgt. Edmund Mooney, Ptl. Matthew Crosta, Ptl. Garrett Henshaw, Ptl. Anthony Pacella, Ptl. Pascel Gambardella**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MIQUENEL ALTIDOR, individually, and :
MITCHNAIDINE ALTIDOR AND :
ASHLEY ALTIDOR, by their guardian ad :
LiteM, MIQUENEL ALTIDOR :

Civil Action No. 3:18-cv-14834 (MAS-DEA)

Plaintiff, :

v. :

**ANSWER TO COMPLAINT,
SEPARATE DEFENSES, CROSS-CLAIMS
AND COUNTERCLAIM**

TOMS RIVER POLICE DEPARTMENT, :
TOWNSHIP OF TOMS RIVER, SGT. :
EDMUND MOONEY, PTL. MATTHEW :
CROSTA, PTL. GARRETT HENSHAW, :
PTL. ANTHONY PACELLA, PTL. PASCEL: :
GAMBARDELLA, JOHN DOE POLICE :
OFFICERS 1-10, JOHN DOE CHIEF AND :
SUPERVISORS 1-10, (such names being :
Fictitious), ABC POLICE DEPARTMENTS :
1-10, ABC COMPANIES 1-10, (such entities :
being fictitious) :

Defendants. :

Defendants, Township of Toms River improperly pled as the Township of Toms River and the Toms River Police Department, Sgt. Edmund Mooney, Ptl. Matthew Crosta, Ptl.

Garrett Henshaw, Ptl. Anthony Pacella, Ptl. Pascel Gambardella, having the business address of 33 Washington Street, Toms River, New Jersey, 08754, by way of Answer to the Complaint, say:

PARTIES

1. Defendants neither admit or deny the allegations set forth in paragraphs 1 and 2 and leave plaintiffs to their proofs.

2. The allegations in paragraphs 3 through 7 are denied except to admit that the named officers on the date in question were employed by the Toms River Police Department.

3. The allegations in paragraphs 8 and 9 are denied except to admit that Toms River Township is a Municipal Corporation of the State of New Jersey and that the Toms River Police Department is a section of Toms River Township.

4. Defendants neither admit or deny the allegations set forth in paragraphs 10, 11 and 12 and leave plaintiffs to their proofs.

JURISDICTION AND VENUE

5. Defendants neither admit or deny the allegations set forth in paragraphs 13 and 14 and leave plaintiffs to their proofs.

FACTS COMMON TO ALL COUNTS

6. The allegations in paragraphs 15 through 41 are denied.

COUNT ONE

(42 U.S.C. §1983 Unreasonable and Excessive Force)

1. Defendants repeat their answers to the prior allegations.

2. The allegations in paragraphs 2 through 5 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE**

DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT TWO
(42 U.S.C. 1981, 1983 Racial Discrimination)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 6 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA,** demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT THREE
(42 U.S.C. § 1983 False Arrest)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 though 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA,** demand

judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT FOUR
(42 U.S.C. § 1983 Supervisor Liability)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 9 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT FIVE
(Common Law Assault and Battery)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT SIX

(42 U.S.C. § 1983 Common Law False Arrest/Imprisonment)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT SEVEN

(New Jersey Law Against Discrimination Act (NJLAD))

N.J.S.A. 10:5-2, et seq.

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT EIGHT
(Negligent Hiring)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT NINE
(Negligent Training)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 5 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT TEN
(Violation of The New Jersey Civil Rights Act)
N.J.S.A. 10:6-1, et seq.

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 9 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT ELEVEN

(Negligent and Intentional Infliction of Emotional Distress)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 and 3 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT TWELVE
(Arrest without a Warrant)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 3 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNT THIRTEEN
(Punitive Damages)

1. Defendants repeat their answers to the prior allegations as if the same were more fully set forth at length herein.

2. The allegations in paragraphs 2 through 4 are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

PRAYER FOR RELIEF

1. The allegations of the Prayer for Relief are denied.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

SEPARATE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.
2. Defendants were not negligent.
3. Injuries complained of are the result of plaintiff's own negligence.
4. The accident and injuries alleged were caused or contributed to by the negligence of others over whom these Defendants have no control and for whom they had no legal liability.
5. While denying any negligence for the accident and injuries alleged, should the negligence of Plaintiffs be found to be not greater than that of Defendants, these Defendants demand damages be diminished by this percentage of negligence attributable to Plaintiff, pursuant to the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 et seq.
6. This suit is barred by the Statute of Limitations.
7. The applicability of the provisions of N.J.S.A. 59:2-1 and N.J.S.A. 59:2-2, as to the immunities available to the public entity and/or public employee are asserted.

8. The applicability of the provisions of N.J.S.A. 59:2-3 and N.J.S.A. 59:3-2, as to the absence of liability from the exercise of judgment or discretion are asserted.

9. The applicability of the provisions of N.J.S.A. 59:2-4, N.J.S.A. 59:3-3 and N.J.S.A. 59:3-4, as to the non-liability for any injury caused by adopting or failing to adopt a law or by failing to enforce a law are asserted.

10. The applicability of the provisions of N.J.S.A. 59:3-5 as to the non-liability of a public employee for an injury caused by its adoption or failure to adopt any law or by its failure to enforce any law are asserted.

11. The applicability of the provisions of N.J.S.A. 59:5-4 as to the failure to provide police protection service are asserted.

12. The applicability of the provisions of N.J.S.A. 59:8-3 through N.J.S.A. 59:8-7 regarding failure to provide adequate notice of claim are asserted.

13. The applicability of the provisions of N.J.S.A. 59:8-8 through N.J.S.A. 59:8-11 regarding failure to timely file notice of claim are asserted.

14. The applicability of the provisions of N.J.S.A. 59:9-1 through N.J.S.A. 59:9-7 concerning conditions of suit and judgment are asserted.

15. The accident and injuries alleged were caused or contributed to by the negligence of others over whom these defendants had no control and for whom they have no legal liability.

16. At all times mentioned in the Complaint any and all actions or omissions of the defendants relating in any way to plaintiff's alleged damages involved decisions of the defendants within an area of non-actionable governmental discretion. By virtue of the said discretion, defendants are not liable to any party herein.

17. At all times defendants acted in good faith and accordingly are immune from any liability to the plaintiff.

18. These defendants did not act in any conspiracy against the plaintiff.

19. Plaintiff's civil rights were not violated.

20. These defendants acted in good faith and their actions were based on reasonable cause.

21. At all times pertinent to the allegations contained within the plaintiff's complaint, these defendants acted within the boundaries of their lawful authority.

22. These defendants, at no time pertinent to the allegations contained within plaintiff's complaint, acted intentionally, knowingly or maliciously in such a manner so as to cause the injuries alleged by the plaintiff.

23. At all times pertinent to the allegations contained within plaintiff's complaint, these defendants acted reasonably and properly in the execution of their duties.

24. The plaintiff is bound by representation of his attorney and the Court that probable cause existed and, therefore, may not maintain this action.

25. These defendants are entitled to qualified immunity.

26. These defendants are entitled to absolute immunity.

27. These defendants were acting in accordance with clearly established standards and accordingly are not liable to the plaintiff.

28. The municipal defendants and all defendants acting in their official capacity are immune from punitive damages under the Civil Rights Act, 42 *U.S.C.* § 1983 and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

29. The cause of action alleged by the plaintiff is not cognizable under the Civil Rights Act, 42 U.S.C. § 1983 and 1985.

30. Plaintiff's complaint is barred by the Doctrine of Collateral Estoppel.

31. The Doctrine of *Respondeat Superior* does not apply in civil actions brought under 42 U.S.C. § 1983.

32. The complaint is insufficient and violates the Local Civil Rules governing the District of New Jersey.

33. Plaintiff fails to state a *Monell* claim.

34. Defendants hereby reserve the right to interpose such other defenses and objections as continuing discovery may disclose.

CROSS-CLAIM FOR CONTRIBUTION

Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand contribution from any and all co-defendants, in accordance with the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 et seq.

CROSS-CLAIM FOR INDEMNIFICATION

While not admitting liability herein, if it is determined that defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, were guilty of negligence, such negligence was vicarious, passive and secondary

and that it was the negligence of co-defendants, which was active, primary and the proximate cause of plaintiff's damages and defendants herein demand indemnification against said co-defendants for the amount of any judgment as against defendants herein and costs.

CROSS-CLAIM FOR CONTRACTUAL INDEMNIFICATION

While denying any liability to plaintiffs for the accident and injuries alleged, should liability be adjudged, defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, seek indemnity, together with attorneys' fees and costs of suit, from any and all co-defendants, for any and all sums which it might be held liable to plaintiff by reason of the contract in existence between the parties at the time of the occurrence of the alleged incident.

ANSWER TO CROSS-CLAIMS

Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, by way of Answer to any and all Cross-claims which have been or may be asserted against it, say:

1. The allegations of any Cross-claim are denied and Cross-claimants are not entitled to the relief sought.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT**

HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

COUNTERCLAIM FOR ATTORNEYS' FEES

1. The allegations contained in the Plaintiffs' complaint and any amended complaint are frivolous, groundless, and without merit as to the answering Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**.

2. 42 U.S.C. § 1988 provides for the allowance of reasonable attorneys' fees to the prevailing party in an action or proceeding arising out of an alleged violation of § 1981, 1982, 1983, 1985, and 1986 of Title 42 of the United States Code.

WHEREFORE, Defendants, **TOWNSHIP OF TOMS RIVER IMPROPERLY PLED AS THE TOWNSHIP OF TOMS RIVER AND THE TOMS RIVER POLICE DEPARTMENT, SGT. EDMUND MOONEY, PTL. MATTHEW CROSTA, PTL. GARRETT HENSHAW, PTL. ANTHONY PACELLA, PTL. PASCEL GAMBARDELLA**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

LOCAL CIVIL RULE 11.2 CERTIFICATION

The undersigned counsel hereby certifies that the within matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative

proceeding and that, to the best of counsel's knowledge, there is no other party who should be joined in this action.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the Rules of Court, Thomas E. Monahan, Esq., has been designated as trial counsel in connection with this matter.

GILMORE & MONAHAN, P.A.

Attorneys for **Defendants, Township of Toms River Improperly Pled as the Township of Toms River and the Toms River Police Department, Sgt. Edmund Mooney, Ptl. Matthew Crosta, Ptl. Garrett Henshaw, Ptl. Anthony Pacella, Ptl. Pascal Gambardella**

By /s/ Thomas E. Monahan

THOMAS E. MONAHAN

For the Firm

Date: November 12, 2018